

Fair Political Practices Commission

MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel

Subject: Finding Required for Holding Special Meeting on Less than 10 Days' Notice – Government Code Section 11125.4(c)

Date: November 3, 2008

Proposed Commission Action and Staff Recommendation: Make a finding, under Government Code Section 11125.4(c), that holding this meeting on less than the usual 10 days' notice is necessary, as described below.

Reason and Authority for Meeting on Less than 10-Days' Public Notice: This meeting has been convened by giving less than the usual 10-days' notice to the public. This is permissible under Government Code Section 11125.4 when a state body needs to consider, among other things, pending litigation and compliance with the usual 10-day pre-meeting notice requirement in the Bagley-Keene Open Meeting Act (see Gov. Code Sec. 11125) "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest." (Gov. Code Sec. 11125.4(a).) When a body acts under this provision, it must give at least 48-hours' advance notice of its meeting (see Gov. Code Sec. 11125(b)) and make the finding of substantial hardship or protecting the public interest in open session.

On October 15, 2008, the Federal District Court approved a settlement between the parties in the case of *Carole Migden, et al. v. California Fair Political Practices Commission, et al.* (Federal District Court for the Eastern District of California, Case No. 2:08-CIV-486 LEW-EFB). As agreed in the settlement, Plaintiffs were permitted to seek attorneys' fees. The Plaintiffs must file their motion to seek attorneys' fees by November 14, 2008 or waive that right.

The Plaintiffs have approached the Commission staff with a settlement offer on the attorneys' fees issue. If the Commission does not respond to the settlement offer immediately, time constraints will force the Plaintiffs to file their attorneys' fees motion and expend considerable time in doing so. The additional attorneys' fees incurred by Plaintiffs in the preparation and filing of a contested motion could result in the court ordering an attorneys' fee award well in excess of the amount offered in the settlement, thereby costing the State of California more than is necessary to possibly resolve this matter.

If the Commission is required to give 10-days' notice before meeting on this matter the meeting would take place so close to the November 14, 2008 deadline that Plaintiffs will have no choice but to preserve their rights and prepare and file a contested motion with the court. Therefore, to avoid the risk of incurring substantial additional and possibly unnecessary attorneys' fees for the State and protect the public interest, it is necessary for the Commission to hold a special meeting to immediately deliberate the issues described above and provide less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Recommended Finding: Based on the foregoing, staff proposes the Commission make the following findings:

1. The Commission is a party in the case of *Carole Migden, et al. v. California Fair Political Practices Commission, et al.* (Federal District Court for the Eastern District of California, Case No. 2:08-CIV-486 LEW-EFB).
2. On October 15, 2008 the Federal District Court approved a settlement between the parties in this case, part of which permitted the Plaintiffs to seek attorneys' fees.
3. The Plaintiffs must file their motion for attorneys' fees by November 14, 2008 or waive their right to pursue the attorneys' fees.
4. Plaintiffs have approached the Commission staff with a proposal to settle the attorneys' fees issue and staff desires that the Commission consider the proposal and provide guidance to staff.
5. If the Commission is required to give 10-days' notice before meeting on this matter, the meeting would take place too near the November 14, 2008 deadline and Plaintiffs will have no choice but to preserve their rights and prepare and file a contested motion with the court, thereby incurring substantial additional attorneys' fees which the State may have to pay.
6. Therefore, to avoid the risk of incurring substantial and possibly unnecessary additional attorneys' fees for the State, and thereby protect the public interest, it is necessary for the Commission to hold a special meeting to immediately deliberate the issues described above and provide less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Voting on the Finding: Government Code Section 11125(c) requires a two-thirds vote (four votes) to make the finding if all Commissioners are present and a unanimous vote if less than all Commissioners are present.